

**Board of Forestry and Fire Protection
Title 14 of the California Code of Regulations**

[Notice Published August 26, 2005]

NOTICE OF PROPOSED RULEMAKING

Performance Based Hazard Reduction, 2006

The Board of Forestry and Fire Protection (Board) proposes to adopt the regulations of Title 14 of the California Code of Regulations (14 CCR) described below after considering all comments, objections, and recommendations regarding the proposed action.

Adopt:

14 CCR § 957 Hazard Reduction

14 CCR § 957.11 Performance Based Hazard Reduction

14 CCR § 957.12 Treatment of Logging Slash to Reduce Fire Hazard

PUBLIC HEARING

The Board will hold a public hearing starting at 9:00 A.M., on Wednesday, October 12, 2005, at the Resources Building Auditorium, 1st Floor, and 1416 Ninth Street, Sacramento, California. At the hearing, any person may present statements or arguments, orally or in writing, relevant to the proposed action described in the *Informative Digest*. The Board requests, but does not require, that persons who make oral comments at the hearing also submit a summary of their statements. Additionally, pursuant to Government Code 11125.1, any information presented to the Board during the open hearing in connection with a matter subject to discussion or consideration becomes part of the public record. Such information shall be retained by the Board and shall be made available upon request.

WRITTEN COMMENT PERIOD

Any person, or authorized representative, may submit written comments relevant to the proposed regulatory action to the Board. The written comment period ends at 5:00 P.M., on Tuesday, October 10, 2005. The Board will consider only written comments received at the Board office by that time (in addition to those written comments received at the public hearing). The Board requests, but does not require, that persons who submit written comments to the Board reference the title of the rulemaking proposal in their comments to facilitate review.

Written comments shall be submitted to the following address:

Board of Forestry and Fire Protection
Attn: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460

Written comments can also be hand delivered to the contact person listed in this notice at the following address:

Board of Forestry and Fire Protection
Room 1506-14
1416 9th Street
Sacramento, CA

Written comments may also be sent to the Board via facsimile at the following phone number:

(916) 653-0989

Written comments may also be delivered via e-mail at the following address:

board.public.comments@fire.ca.gov

AUTHORITY AND REFERENCE

Public Resources Code (PRC) 4551 and 4554.5 authorizes the Board to adopt such rules and regulations as it determines are reasonably necessary to enable it to implement, interpret or make specific sections 4512, 4513 and 4561 of the Public Resources Code. Reference: Public Resources Code sections 4513, 4551.5, 4561 and 21080.5.

INFORMATIVE DIGEST/POLICY STATEMENT OVERVIEW

Existing law PRC 4562, Fire protection zone rules, requires treatment of slash to reduce fire and pest hazards on timberlands. Current regulations under 14 CCR § 957 prescribe the slash treatment activities for compliance with PRC 4262. The Board is promulgating a regulation which provides more flexible standards, compared to existing regulations, for treatment of logging slash in order to reduce fire and pest hazard in logging areas, in accordance with goals under 14 CCR § 957. The new regulation provides a Registered Professional Foresters (RPFs) preparing Timber Harvesting Plans (plan) the opportunity to develop the slash treatment components based on a set of “performance standards”, instead of prescriptive requirements. In general, performance standard regulation means a regulation that describes an objective with the criteria stated to meet the objective. The proposed regulation is expected to provide “regulatory relief” in that a wider range of

treatment methods may be established by the RPF, when in conformance with the Forest Practice Act and the Rules of the Board. The regulation is a “pilot” regulation which the Board will monitor and evaluate for a limited period of time (three years).

SPECIFIC PURPOSE OF THE REGULATION

The proposed regulation establishes broad criteria to meet FPR goals to reduce the fire and pest hazards resulting from flammable debris (slash) created during timber harvesting. Existing rules permit a limited number of slash treatment methods to reduce hazards and include detailed compliance requirements that have historically been demonstrated to be effective. The Board recognizes that meeting the goals of reducing fire and pest hazards in accordance with the FPRs can be accomplished in a wider number of ways, when considering all site specific factors such as estimated amount and distribution of slash to be created by the operation, type of remaining vegetation, topography, climate, degree of public exposure, and fire history. A wider range of methods may provide the plan submitter the opportunity to both highly meet hazard reduction requirements and do so in a more cost effective manner.

The primary purpose of the rule is to create a performance based regulation that describes the criteria and goals necessary to meet hazard reduction requirements of the FPRs. The following subsections describe the goals and establish the criteria for hazard reduction related to slash treatment:

Section 957

Section 957 establishes that an RPF may use either existing regulations that address hazard reduction or use the proposed performance based rules. It also indicates that the proposed rule will expire on December 31, 2009.

Section 957.11

Section 957.11 defines the goals the performance based slash reduction treatments must accomplish. These goals include: provide a level of fire and pest protection to property and resources that meets or exceeds the intent of protection provided under 14 CCR § 957 through 957.8; provide information for direction for RPFs on how to prepare a slash reduction plan; provide information for direction for the timber operators implementing the slash treatments; and provide direction for CDF in its review, approval, inspection, and monitoring of the slash treatments.

Section 957.12

Section 957.12 defines the locations where slash treatment apply and details the criteria the RPF must consider in developing slash treatments. These are the criteria which will be used to determine if the performance goals are met. The area applicable for the slash treatments includes the plan area, adjacent roads, but excludes appurtenant roads.

Section 957.12 (a)(1-5)

Section 957.12 (a)(1-5) lists the criteria the RPF must consider in developing slash treatments. Among the criteria are site specific considerations including amount and distribution of slash, type of remaining vegetation, topography, climate, degree of public exposure, and fire history.

The RPF must also document other criteria used to develop the slash treatments. The documentation must include a description of all the slash treatments to be used and the locations of treatments. Other documentation includes discussion of timing of slash treatments, precautions employed to avoid fire escape when using broadcast burning, precautions taken during slash treatment to protect wildlife and beneficial uses of water, and treatments adjacent to roads and human inhabited houses.

Section 957.12 (b) (1-4)

Section 957.12 (b) (1-4) details other operational criteria that must be met when slash treatment using burning as a disposal method is used. These include conducting operation only at times safe for burning and in accordance with law; preparing slash piles that are sufficiently free of non combustible material; requirements for follow-up treatments for ineffective slash treatments; and protection of residual trees.

Section 957.12 (b) (5-7)

Section 957.12 (b) (5-7) establishes administrative requirements for the plan submitter. These include the need to provide the information the RPF used to develop the slash treatment methods to the Director when requested by the Director; a burning permit for operations with unusual fire hazards; and notification to the Director of CDF of the time of place of burning.

DISCLOSURES REGARDING THE PROPOSED ACTION

The Board has determined the proposed action will have the following effects:

- Mandate on local agencies and school districts: None
- Costs or savings to any State agency: None
- Cost to any local agency or school district which must be reimbursed in accordance with the applicable Government Code (GC) sections commencing with GC 17500: None
- Other non-discretionary cost or savings imposed upon local agencies: None
- Cost or savings in federal funding to the State: None

- The Board has made an initial determination that there will be no significant statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states.
- Cost impacts on representative private persons or businesses: The Board is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.
- Significant effect on housing costs: None
- Adoption of these regulations will not: (1) create or eliminate jobs within California; (2) create new businesses or eliminate existing businesses within California; or (3) affect the expansion of businesses currently doing business within California.
- Effect on small business: The Board has determined that the proposed amendments will not have an adverse affect on small business. The proposed regulation is designed to provide regulatory relief, leading to substantial reduction in regulatory filing and preparation fees.
- The proposed rules do not conflict with, or duplicate Federal regulations.

BUSINESS REPORTING REQUIREMENT

The regulation does not require a report, which shall apply to businesses.

CONSIDERATION OF ALTERNATIVES

In accordance with Government Code 11346.5(a) (13), the Board must determine that no reasonable alternative it considers or that has otherwise been identified and brought to the attention of the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

CONTACT PERSON

Requests for copies of the proposed text of the regulations, the *Initial Statement of Reasons*, modified text of the regulations and any questions regarding the substance of the proposed action may be directed to:

Board of Forestry and Fire Protection
Attn: Christopher Zimny
Regulations Coordinator
P.O. Box 944246
Sacramento, CA 94244-2460
Telephone: (916) 653-9418

The designated backup person in the event Mr. Zimny is not available is Doug Wickizer, California Department of Forestry and Fire Protection, at the above address and phone (916) 653-5602.

AVAILABILITY OF STATEMENT OF REASONS AND TEXT OF PROPOSED REGULATIONS

The Board has prepared an *Initial Statement of Reasons* providing an explanation of the purpose, background, and justification for the proposed regulations. The statement is available from the contact person on request.

When the *Final Statement of Reasons* has been prepared, the statement will be available from the contact person on request.

A copy of the express terms of the proposed action using UNDERLINE to indicate an addition to the California Code of Regulations and ~~STRIKETHROUGH~~ to indicate a deletion, is also available from the contact person named in this notice.

The Board will have the entire rulemaking file, including all information considered as a basis for this proposed regulation, available for public inspection and copying throughout the rulemaking process at its office at the above address. All of the above referenced information is also available on the CDF web site at:

http://www.fire.ca.gov/BOF/board/board_proposed_rule_packages.html

AVAILABILITY OF CHANGED OR MODIFIED TEXT

After holding the hearing and considering all timely and relevant comments received, the Board may adopt the proposed regulations substantially as described in this notice. If the Board makes modifications which are sufficiently related to the originally proposed text, it will make the modified text—with the changes clearly indicated—available to the public for at least 15 days before the Board adopts the regulations as revised. Notice of the comment period on changed regulations, and the full text as modified, will be sent to any person who:

- a) testified at the hearings,
- b) submitted comments during the public comment period, including written and oral comments received at the public hearing, or
- c) requested notification of the availability of such changes from the Board of Forestry and Fire Protection.

Requests for copies of the modified text of the regulations may be directed to the contact person listed in this notice. The Board will accept written comments on the modified regulations for 15 days after the date on which they are made available.

Christopher Zimny

Regulations Coordinator
Board of Forestry and Fire Protection
File: 45 Day Notice 8_9_05